

Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, D.C. 20554

JAN - 5 2001

FEDERAL COMMUNICATIONS COMMISSION
 OFFICE OF THE SECRETARY

In the Matter of)

Iowa Wireless Services Holding Corporation)
 PCS Stations WPOH984,)
 Des Moines-Quad Cities, Iowa MTA;)
 KNLG769, Marshalltown, Iowa BTA;)
 KNLG770, Mason City, Iowa BTA)
 KNLH741, Burlington, Iowa BTA)
 KNLH743, Clinton, Iowa-Sterling,)
 Illinois BTA)

Non-Streamlined ISP-PDR-20010105-00003
 IOWA WIRELESS SERVICES HOLDING CORPORATION

Petition for a Determination of the Public)
 Interest under 47 U.S.C. § 310(b)(4), and)
 for a Ruling that the Transfer of a Minority)
 Ownership Interest in the Licensee does not)
 constitute a transfer of control under)
 47 U.S.C. § 310(d))

IB-Docket
 00-187

To: The International and Wireless Telecommunications Bureaus

PETITION FOR DECLARATORY RULING

Iowa Wireless Services Holding Corporation, ("Iowa Wireless") by its attorney, and pursuant to Section 310(b)(4) of the Communications Act of 1934, as amended, 47 U.S.C. §310(b)(4) ("the Act"), and Section 1.2 of the Commission's rules, 47 C.F.R. §1.2, hereby petitions the International and Wireless Telecommunications Bureaus to issue a declaratory ruling that (i) Deutsche Telekom AG's ("DT") proposed acquisition of a 38 percent indirect ownership interest in Iowa Wireless, resulting from consummation of DT's pending merger with VoiceStream Wireless Corporation ("VoiceStream"),¹ is consistent with the public interest; and (ii) acquisition of such interest is not a transfer of control under Section 310(d) of the Act, 47 U.S.C. §310(d) and Section 1.948 of the Commission's Rules, 47 C.F.R. §1.948.

No. of Copies rec'd 041
 I-ABCDE

¹ IB Docket No. 00-187, Public Notice DA 00-2251 (rel. Oct. 11, 2000).

COPY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

JAN - 5 2001

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Iowa Wireless Services Holding Corporation)

PCS Stations WPOH984,)

Des Moines-Quad Cities, Iowa MTA;)

KNLG769, Marshalltown, Iowa BTA;)

KNLG770, Mason City, Iowa BTA)

KNLH741, Burlington, Iowa BTA)

KNLH743, Clinton, Iowa-Sterling,)

Illinois BTA)

Petition for a Determination of the Public)

Interest under 47 U.S.C. § 310(b)(4), and)

for a Ruling that the Transfer of a Minority)

Ownership Interest in the Licensee does not)

constitute a transfer of control under)

47 U.S.C. § 310(d))

No. _____

To: The International and Wireless Telecommunications Bureaus

PETITION FOR DECLARATORY RULING

Iowa Wireless Services Holding Corporation, ("Iowa Wireless") by its attorney, and pursuant to Section 310(b)(4) of the Communications Act of 1934, as amended, 47 U.S.C. §310(b)(4) ("the Act"), and Section 1.2 of the Commission's rules, 47 C.F.R. §1.2, hereby petitions the International and Wireless Telecommunications Bureaus to issue a declaratory ruling that (i) Deutsche Telekom AG's ("DT") proposed acquisition of a 38 percent indirect ownership interest in Iowa Wireless, resulting from consummation of DT's pending merger with VoiceStream Wireless Corporation ("VoiceStream"),¹ is consistent with the public interest; and (ii) acquisition of such interest is not a transfer of control under Section 310(d) of the Act, 47 U.S.C. §310(d) and Section 1.948 of the Commission's Rules, 47 C.F.R. §1.948.

¹ IB Docket No. 00-187, Public Notice DA 00-2251 (rel. Oct. 11, 2000).

VoiceStream PCS I Iowa Corporation ("VoiceStream PCS"), which is an indirect wholly-owned subsidiary of VoiceStream,² is a 38 percent limited partner in Iowa Wireless Services, L.P. ("IWS-LP"). IWS-LP, in turn, owns 100 percent of the licensee, Iowa Wireless, which holds license authorizations WPOH984, KNLG769, KNLG770, KNLH741, and KNLH743.³ In accepting the VoiceStream/DT merger applications for filing, the Commission identified Iowa Wireless as one of the licensees in which VoiceStream holds a minority interest from which it expects to receive a petition for declaratory ruling under Section 310(b)(4) of the Act. As set forth herein and in the merger applications and the related Petition for Declaratory Ruling filed jointly therewith by VoiceStream and DT on September 18, 2000,⁴ DT's indirect ownership of Iowa Wireless through DT's ownership of VoiceStream is consistent with the public interest as it will deliver substantial pro-competitive benefits. In addition to the Section 310(b)(4) ruling sought herein, out of an abundance of caution, and as more fully described below, Iowa Wireless also seeks a ruling herein that the proposed transfer does not trigger any separate prior approval under the Commission's licensee control rules, policies, and precedents.

I. Background

Iowa Wireless is a Delaware corporation wholly-owned by IWS-LP, which in turn is comprised of a general partner, INS Wireless, Inc. ("INSW"), an Iowa corporation, which holds a 62 percent general partnership interest, and a limited partner, VoiceStream PCS, which holds a 38

² See Attachment A.

³ IWS-LP assigned licenses for PCS Stations WPOH984, KNLG769, KNLG770, KNLH741 and KNLH743, respectively, to Iowa Wireless on a *pro forma* basis by application filed August 19, 1998. See FCC File No. 0000003041 and 0000003123.

⁴ "Application for Transfer of Control and Petition for Declaratory Ruling," filed Sept. 18, 2000; See FCC Lead Application File No. 0000211827 ("*Joint Application*").

percent limited partnership interest.⁵ The Limited Partnership Agreement (the "Agreement") between VoiceStream PCS and INSW was filed with the Commission in two related assignment applications (File Nos. 50040-CW-AL-98 and 50039-CW-AL-98) filed by IWS-LP (Iowa Wireless' parent company and predecessor in interest) in 1997 to acquire a partitioned and disaggregated portion of the Des Moines/Quad Cities A Block license KNLF263 and assignment of licenses KNLH741 in the Burlington, Iowa BTA; KNLH743 in the Clinton, Iowa-Sterling, Illinois BTA; KNLG769 in the Marshalltown, Iowa BTA; and KNLG770 in the Mason City, Iowa BTA from VoiceStream PCS. The applications were granted by Public Notice, Rep. No. LB-98-17, dated December 31, 1997, and Public Notice, Rep. No. LB-98-14, dated December 19, 1997, respectively. Subject to certain minority investor protection rights held by VoiceStream PCS, the Agreement provides that the "overall management and control of and conduct of the business, assets and affairs of the Partnership shall be vested in the General Partner, and the General Partner . . . shall have full, exclusive and complete charge of the management of the business of the Partnership . . ."⁶ The Agreement further provides that except for certain investor protection rights set forth therein, the Limited Partners, of which VoiceStream PCS is the only one, "shall not take part in the management or control of the business of the Partnership or have authority to bind the Partnership or incur any liability for the Partnership . . ."⁷ Notwithstanding these provisions, because the Agreement accords

⁵ INS Wireless, Inc. is wholly owned by Iowa Network Services, Inc. (INS), an Iowa corporation. See Attachment B.

⁶ Agreement, Section 4.1.

⁷ *Id.*

VoiceStream PCS certain veto rights over financial decisions of IWS-LP,⁸ Iowa Wireless is seeking a further ruling out of an abundance of caution to make certain that no other prior approval is necessary before VoiceStream may transfer control of its indirect 38 percent limited partnership interest in IWS-LP to DT. In that regard, VoiceStream and DT have filed herewith an FCC Form 603, which the Commission may process to the extent it deems processing of such an application necessary to effectuate the transfer of control of VoiceStream PCS' minority interest in IWS-LP to DT.

Iowa Wireless' primary business is the provision of Personal Communication Service (PCS). INS is also a PCS licensee.⁹ INS' principal business is the provision of centralized equal access service in the State of Iowa.

II. Argument

On July 23, 2000, VoiceStream and DT entered into an Agreement and Plan of Merger, which was amended and restated as of September 28, 2000, that, if consummated, will give DT control of VoiceStream.¹⁰ Because VoiceStream PCS's indirect 38 percent ownership of Iowa Wireless, if transferred to DT, would exceed the 25 percent statutory benchmark, the Commission must determine that DT's proposed acquisition of that interest upon consummation of the merger

⁸ For example, INSW, as the General Partner, requires VoiceStream PCS' consent before it may approve any operating or capital budget, change its accounting methods or fiscal year, incur any indebtedness in excess of \$50,000 in the aggregate; purchase or lease properties or assets during a twelve month period having a price or rental of \$50,000 in the aggregate for all such contracts. *See Agreement, Section 4.3.*

⁹ INS also owns a 57.2 percent share in Iowa Telecommunications Services, Inc. ("Iowa Telecom"), a local exchange carrier operating in the State of Iowa. The remaining shares of Iowa Telecom are held by funds managed by ING Groep N.V. ("ING Groep"). ING Groep's principal place of business is the Netherlands.

¹⁰ *See supra*, n.3.

with VoiceStream is in the public interest.¹¹ As indicated in the Joint Application, the proposed merger is consistent with the public interest because DT's foreign ownership will not harm competition or raise concerns regarding national security or law enforcement.¹² DT's investment in the domestic telecommunications market will increase the level of competition. Moreover, national security and law enforcement issues can be adequately addressed by cooperative efforts with Executive Branch agencies such as the FBI and Department of Defense.

Under the framework adopted in the *Foreign Participation Order*, Germany benefits from the rebuttable presumption that entry or investment by foreign-owned firms from WTO member countries is in the public interest.¹³ Moreover, the proposed merger should bring benefits to the marketplace by strengthening Iowa Wireless' ability to offer robust competitively priced services. For example, the merger will improve Iowa Wireless' financial ability to accelerate the construction of its network in rural America. It will also enable Iowa Wireless to share in the economies of scale that will result from the merger, which should reduce Iowa Wireless' network construction costs and per-unit handset costs. These benefits should bring lower priced alternatives to the domestic wireless market sooner than would be the case in the absence of the proposed merger. The proposed merger will also permit Iowa Wireless to offer innovative service packages with international roaming capability attractive to international travelers.

¹¹ 47 U.S.C. §310(b)(4).

¹² See *Joint Application*, at 33. Iowa Wireless hereby incorporates by reference the Joint Application in the instant Petition for Declaratory Ruling.

¹³ See *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market*, IB Docket No. 97-142, *Market Entry and Regulation of Foreign-Affiliated Entities*, IB Docket No. 95-22, Report and Order and Order on Reconsideration, 12 FCC Rcd 23891 (1997) ("*Foreign Participation Order*").

Finally, as Chairman Kennard recently indicated, “[i]ncreased competition, both from U.S. and foreign-owned firms, has not harmed the U.S. market, but has strengthened it, to the benefit of U.S. consumers.”¹⁴ Consequently, with the competitive benefits apparent, the proposed merger will not “pose a very high risk to competition” and should therefore be found to be in the public interest.¹⁵

III. Request For Ruling That DT’s Acquisition of VoiceStream PCS’ Limited Partnership Interest Is Not a Transfer of Control

On October 30, 1997, assignment applications were filed seeking the Commission’s consent to the partial assignment and disaggregation of 20 MHz of spectrum in the Des Moines/Quad Cities, Iowa MTA of license KNLF263,¹⁶ and assignment of licenses KNLH741 in the Burlington, Iowa BTA, KNLH743 in the Clinton, Iowa-Sterling, Illinois BTA, KNLG769 in the Marshalltown, Iowa BTA, and KNLG770 in the Mason City, Iowa BTA from VoiceStream PCS to IWS-LP.¹⁷ The Commission granted the partial assignment application by Public Notice dated December 31, 1997¹⁸

¹⁴ *Foreign Government Ownership of American Telecommunications Companies, Hearing before House Commerce Committee, Subcommittee on Telecommunications, Trade and Consumer Protection* (Sept. 7, 2000)(statement of William E. Kennard, Chairman, FCC)

¹⁵ *Id.* (indicating a merger with a foreign-government controlled entity would be in the public interest unless the “proposed merger poses a very high risk to competition . . .”)

¹⁶ VoiceStream PCS partitioned and disaggregated the upper 20 MHz of the A Block spectrum of license KNLF263 (channels 26 through 74) throughout the Des Moines-Quad Cities MTA except in Clarke, Dallas, Jasper, Polk, Story, Madison, and Warren Counties. *See* FCC File No. 50040-CW-AL-98. IWS-LP assigned the license for the partitioned/disaggregated spectrum (call sign WPOH984) on a *pro forma* basis to its wholly owned subsidiary, Iowa Wireless. *See* FCC File No. 0000003401 (filed Aug. 19, 1998).

¹⁷ *See* CW-CW-AL-98.

¹⁸ *See* Wireless Telecommunications Bureau Commercial Wireless Service Information, Report No. LB-98-17, 1997 FCC LEXIS 7211 (1997).

and the full assignment applications on December 19, 1997.¹⁹ Exhibit 2 to the partial assignment application and Exhibit 3 to the assignment application contained a copy of the IWS-LP Limited Partnership Agreement (“Agreement”), setting forth the respective rights and obligations of the partners.

Section 4.1 of the Agreement vests day-to-day management of the Partnership in the general partner. The Agreement further provides that except for certain investor protection rights set forth therein, VoiceStream PCS “shall not take part in the management or control of the business of the Partnership or have authority to bind the Partnership or incur any liability for the Partnership”²⁰ Notwithstanding that provision, Section 4.3 of the Agreement gives VoiceStream PCS veto rights over certain financial decisions, also intended to protect VoiceStream PCS’ investment interest in the partnership. In particular, among other provisions, these provisions require INSW, as the general partner, to receive VoiceStream PCS’ prior consent before any of the following may be undertaken: adoption of the operating or capital budget; a change in accounting methods or fiscal year; incurrence of any indebtedness in excess of \$50,000 in the aggregate; purchase or lease of properties or assets during a twelve month period having a price or rental of \$50,000 in the aggregate; execution of any contract, agreement or arrangement with an annual cost of \$50,000 in the aggregate for all such contracts; a change from GSM technology; or the purchase, sale, or resale of spectrum.²¹

INSW, as the General Partner of IWS-LP, has exclusive control over the day-to-day operations of IWS-LP, and, therefore, of the licensee Iowa Wireless. Moreover, VoiceStream PCS

¹⁹ See *Wireless Telecommunications Bureau Commercial Wireless Service Information*, Report No. LB-98-14, 1997 FCC LEXIS 7094 (1997).

²⁰ Agreement, Section 4.1.

²¹ Agreement, Section 4.3.

cannot incur any indebtedness or liability on behalf of IWS-LP or the licensee. VoiceStream PCS may not hire or fire personnel of the licensee and has no access to the system switch or antenna sites, except as such access may be provided by INSW. INSW makes all the policy decisions regarding the types of service (so long as the partnership uses GSM technology), the terms and conditions of service, the nature and extent of service and marketing. INSW's counsel makes all the necessary FCC filings. In view of these facts, the Wireless Telecommunications Bureau should find that the transfer of control of VoiceStream PCS' limited partnership interest in IWS-LP to DT is not a transfer of control of the licensee.²² In the alternative, the Bureau should process the Form 603 filed herewith if it finds that the transfer of control of VoiceStream PCS' limited partnership requires prior approval.

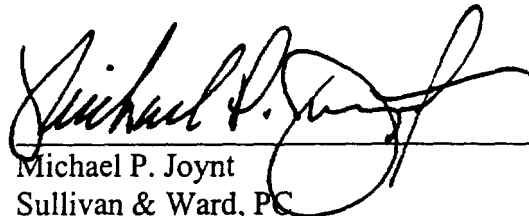
IV. Conclusion

For the foregoing reasons, Iowa Wireless requests that the Bureaus issue a declaratory ruling finding that the proposed indirect ownership of Iowa Wireless by DT will serve the public interest and that VoiceStream PCS' minority interest in IWS-LP to DT is not a transfer of control.

Respectfully submitted,

Iowa Wireless Services Holding Corporation

By:



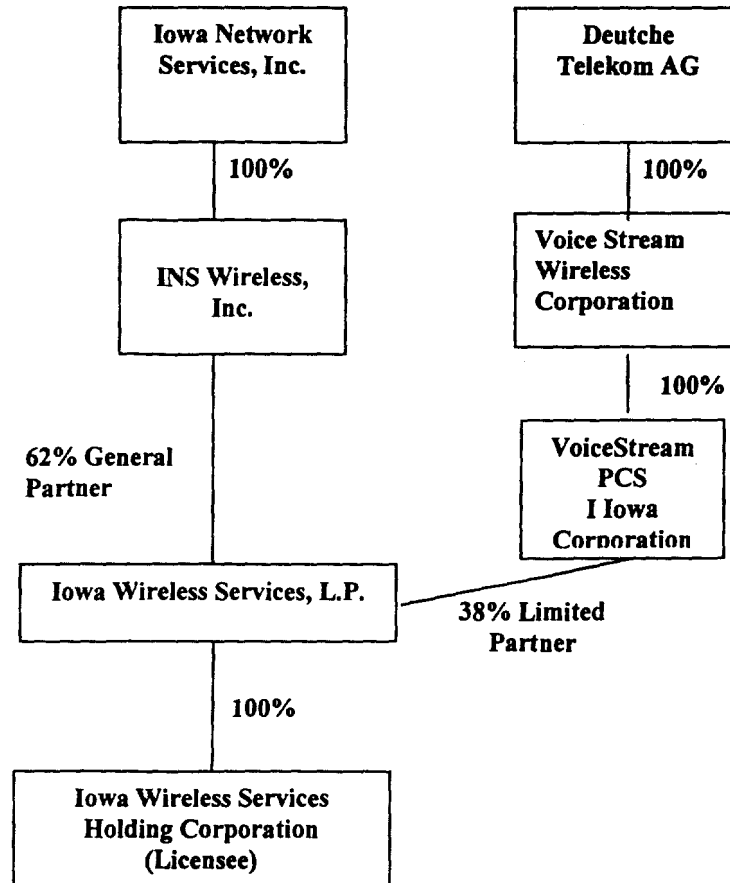
Michael P. Joynt
Sullivan & Ward, PC
801 Grand Avenue, Suite 2500
Des Moines, IA 50309-2719
(515) 244-3500

January 5, 2001

Its Counsel

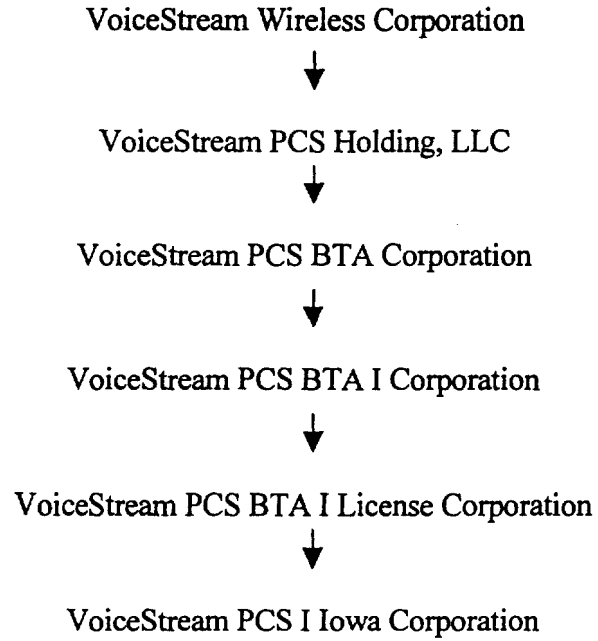
²² See *In re Federal Communications Bar Association's Petition for Forbearance, et al.*, Memorandum Opinion and Order, 13 FCC Rcd 6293 (1997).

Attachment A



Attachment B

VoiceStream Wireless Corporation wholly owns VoiceStream PCS I Iowa Corporation through the following succession of wholly-owned subsidiaries.



CERTIFICATE OF SERVICE

I, Michael P. Joynt, a member of the law firm of Sullivan and Ward, PC, hereby certify that on the 5th day of January, 2001, I caused the foregoing PETITION FOR DECLARATORY RULING to be filed with the Federal Communications Commission and served, via hand delivery (indicated by *) or by U.S. mail, upon the following parties:

*Lauren Kravetz
Commercial Wireless Division
Wireless Telecommunications Bureau
445 12th Street, SW. Room 4-A163
Washington, DC 20554

*Office of Media Relations
Reference Operations Division
445 12th Street, SW
Room CY-A257
Washington, DC 20554

*Claudia Fox
Policy and Facilities Branch
Telecommunications Division
International Bureau
445 12th Street, SW. Room 6-A848
Washington, DC 20554

*Justin Connor
Policy and Facilities Branch
Telecommunications Division
International Bureau
445 12th Street, SW. Room 6-A832
Washington, DC 20554

Senator Ernest F. Hollings
United States Senate
Committee on Commerce Science,
and Transportation
Washington, DC 20510-6125

Computer & Communications Industry
Association
666 11th Street, N.W., 6th Floor
Washington, D.C. 20001

*John Branscome
Commercial Wireless Division
Wireless Telecommunication Bureau
445 12th Street, SW. Room 4-A234
Washington, DC 20554

*Jamison Prime
Public Safety and Private Wireless
Division
Wireless Telecommunication Bureau
445 12th Street, SW. Room 4-A734
Washington, DC 20554

*Carl Huie
Experimental Licensing Branch
Electromagnetic Compatibility Division
Office of Engineering and Technology
445 12th Street, SW Room 7-A361
Washington, DC 20554

James Bird
Office of General Counsel
445 12th Street, SW. Room 8-C818
Washington, DC 20554

Christine E. Enemark
Counsel for Cook Inlet Region, Inc.
Covington & Burling
1201 Pennsylvania Ave., NW
Washington, DC 20004-2401

Howard Frisch
UTStarcom
33 Wood Avenue South, 8th Floor
Iselin, NJ 08830

Edward M. Graham
Institute for International Economics
11 Dupont Circle, NW
Washington, DC 20036-1207

Andrew D. Lipman
Swidler Berlin Shereff Friedman, LLP
3000 K Street, NW, Suite 300
Washington, DC 20007

Debbie Goldman
Communications Workers of America
501 Third St., NW
Washington, DC 20001

Steve Judge
Securities Industry Association
1401 Eye Street, NW
Washington, DC 20005

Todd Malan
Organization for International
Investment
1901 Pennsylvania Ave., NW
Suite 807
Washington, DC 20006

Troy F. Tanner
Swidler Berlin Shereff Friedman, LLP
3000 K Street, NW, Suite 300
Washington, DC 20007

Thomas J. Donohue
United States Chamber of Commerce
1615 H Street, NW
Washington, DC 20062

Pace A. Duckenfield
The Alliance for Public Technology
919 Eighteenth Street, NW
Suite 900
Washington, DC 20006

Susan Grant
National Consumers League
1701 K Street NW, Suite 1200
Washington, DC 20006

Jason Mahler
Computer & Communications Industry
Association
666 Eleventh Street NW, Sixth Floor
Washington, DC 20001

Gary C. Hufbauer
Institute for International Economics
11 Dupont Circle, NW
Washington, DC 20036-1207

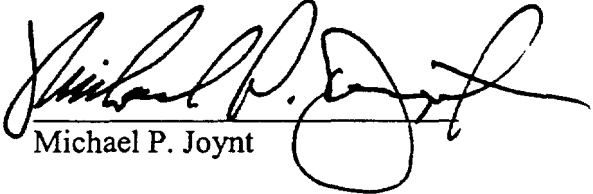
Gerald Schulmeyer
Siemens Corporation
153 East 53rd Street
New York, NY 10022

Cheryl Tritt
Louis Gurman
Doane F. Kiechel
Christa M. Parker
Morrison & Foerster LLP
2000 Pennsylvania Avenue, NW
Washington, DC 20006

William T. Lake
John H. Harwood II
William R. Richardson, Jr.
Matthew A. Brill
Wilmer, Cutler & Pickering
2445 M Street, NW
Washington, DC 20037

International Transcription Services,
Inc.
445 12th Street, SW
Room CY-B402
Washington, DC 20554

Edward A. Yorkgitis, Jr.
Paul G. Madison
Kelley Drye & Warren L.L.P.
1200 Nineteenth Street, NW, Suite 500
Washington, D.C. 20036



Michael P. Joynt